

## § 1717.152

## 7 CFR Ch. XVII (1–1–01 Edition)

on the effective date, an outstanding insured or guaranteed loan from RUS for rural electrification, and whose eligibility for future RUS financing is not restricted pursuant to 7 CFR part 1786.

*Consolidation.* See *Merger*.

*Coverage ratios* means collectively TIER, OTIER, DSC and ODSC, as these terms are defined in 7 CFR 1710.2.

*Effective date* means the date a merger is effective pursuant to applicable state law.

*Former distribution borrower* means any organization that

(1) Sells or intends to sell electric power and energy at retail;

(2) At one time had an outstanding loan made or guaranteed by RUS, or its predecessor the Rural Electrification Administration (REA) for rural electrification; and

(3) Either repaid such loans at face value or prepaid pursuant to 7 CFR part 1786.

*Loan documents* means the mortgage (or other security instrument acceptable to RUS), the loan contract, and the promissory note(s) entered into between the borrower and RUS.

*Merger* means: (1) A consolidation where two or more companies are extinguished and a new successor is created, acquiring the assets, liabilities, franchises and powers of those passing out of existence;

(2) A merger where one company is absorbed by another, the former ceasing to exist as a separate business entity, and the latter retaining its own identity and acquiring the assets, liabilities, franchises and powers of the former; or

(3) A transfer of mortgaged property by one company to another where the transferee acquires substantially as an entirety the assets, liabilities, franchises, and powers of the transferor.

*New loan* means a loan to a successor approved by RUS on or after the effective date.

*Preexisting loan* means a loan to a borrower approved by RUS prior to, and outstanding on the effective date.

*Successor* means the entity that continues as the surviving business entity as of the effective date, and acquires all the assets, liabilities, franchises, and powers of the entity or entities ceasing to exist as of the effective date.

*Transitional assistance* means financial relief provided to borrowers by RUS during a limited period of time following a merger.

### § 1717.152 Required documentation for all mergers.

In order for RUS to advance funds, send bills, and otherwise conduct business with a successor, the documents listed in this section must be submitted to RUS regardless of the need for RUS approval of the merger. Borrowers are responsible for ensuring that these documents are received by RUS in timely fashion. In cases of mergers that require RUS approval, or cases where borrowers must submit requests for transitional assistance, the documents listed in this section may be combined with the documents required by §§1717.157 and/or 1717.160 where appropriate.

(a) Prior to the effective date, borrowers must submit:

(1) A transmittal letter on corporate letterhead signed by the manager of each active borrower that is a party to the proposed merger indicating the borrower's intention to merge and tentative timeframes, including the proposed effective date;

(2) An original certified board resolution from each party to the proposed merger affirming the board's support of the merger;

(3) All documents necessary to evidence the merger pursuant to applicable law. Examples include plan of merger, articles of merger, amended articles of incorporation, bylaws, and notices and filings required by law. These documents may be copies of documents filed elsewhere, unless otherwise specified by RUS; and

(4) A letter addressed to the Administrator from the counsel of at least one of the active borrowers briefly describing the merger and indicating the relevant statutes under which the merger will be consummated.

(b) On or after the effective date, borrowers must submit:

(1) An opinion of counsel from the successor addressing, among other things, any pending litigation, proper authorization and consummation of the merger, proper filing and perfection of RUS' security interest, and all

approvals required by law. RUS will provide the form of the opinion of counsel to the successor;

(2) A letter signed by the manager of the successor advising RUS of the effective date of the merger; the corporate name, address, and phone number; the names of the officers of the successor; and the taxpayer identification number; and

(3) Evidence of proper filing and perfection of RUS' security interest, as instructed by RUS, and an executed loan contract.

#### § 1717.153 Transitional assistance.

RUS recognizes that short-term financial stresses can follow even the most beneficial mergers. To help stabilize electric rates, enhance the credit quality of outstanding loans made or guaranteed by the Government, and otherwise ease the transition period before the long-term efficiencies and economies of a merger can be realized, RUS may approve one or more types of transitional assistance to a successor under the conditions set forth in this part.

#### § 1717.154 Transitional assistance in connection with new loans.

Requests for transitional assistance in connection with new loans may be submitted to RUS no later than the loan application.

(a) *Loan processing priority.* (1) RUS loans are generally processed in chronological order based on the date the complete application is received in the regional or division office. At the borrower's request, RUS will offer loan processing priority for the first loan to a successor, provided that the loan is approved by RUS not later than 5 years after the effective date of the merger. For any subsequent loans approved during those 5 years, RUS may offer loan processing priority. In reviewing requests for loan processing priority on subsequent loans, RUS will consider the loan authority for the fiscal year, the borrower's projected cash flows, its electric rates and rate disparity, and the likely mitigating effects of priority loan processing. See 7 CFR 1710.108 and 1710.119.

(2) Loan processing priority is available following any merger where at

least one of the merging parties is an active borrower.

(b) *Supplemental financing.* (1) RUS generally requires that an applicant for a municipal rate loan obtain a portion of its debt financing from a supplemental source without an RUS guarantee. See 7 CFR 1710.110. RUS will, at the borrower's request, waive the requirement to obtain supplemental financing for the first RUS loan approved after the effective date if that first loan is a municipal rate loan whose loan period does not exceed 2 years, and the loan is approved by RUS not later than 5 years after the effective date. For any subsequent loans approved during these 5 years, or if the borrower requests a loan period longer than 2 years, RUS may, subject to the availability of loan funds, waive or reduce the amount of supplemental financing required. In reviewing requests to reduce or waive supplemental financing on subsequent loans or on loans with a loan period longer than 2 years, RUS will consider the differences in interest rates between RUS and supplemental loans and the impacts of this difference on the borrower's projected cash flows and its electric rates and rate disparity. If significant differences would result, the waiver will be granted.

(2) Waiver of supplemental financing may be available if:

(i) All parties to the merger are active distribution borrowers, or

(ii) At least one of the merging parties is an active distribution borrower, all merging parties are either active distribution borrowers or former distribution borrowers, and the merger is effective after December 19, 1996.

(c) *Reimbursement of general funds and interim financing.* (1) Borrowers may request RUS loan funds to reimburse general funds and/or interim financing used to finance equipment and facilities included in a RUS approved construction work plan or amendment if the construction was completed immediately preceding the current loan period. This reimbursement period is generally limited to 24 months. See 7 CFR 1710.109. RUS may, in connection with the first RUS loan approved after the effective date, approve a reimbursement period of up to 48 months prior to